

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SHEILA L. HAY

Claimant

VS.

CESSNA AIRCRAFT

Self-Insured Respondent

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Docket No. 1,021,005

ORDER

Respondent appealed the February 16, 2005, preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes.

ISSUES

Claimant alleges she slipped and fell at work on December 23, 2004, injuring her left leg. In the February 16, 2005, Order, the Judge granted claimant's request for temporary total disability benefits and medical benefits.

Respondent contends Judge Barnes erred. Respondent argues claimant's accident did not arise out of her employment with respondent as it allegedly occurred as the result of either horseplay or a personal risk. Consequently, respondent requests the Board to reverse the preliminary hearing Order and to deny claimant's request for workers compensation benefits.

Conversely, claimant contends the preliminary hearing Order should be affirmed. Claimant asserts respondent's arguments are without merit or foundation.

The only issue before the Board on this appeal is whether claimant's December 23, 2004, accident arose out of her employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and considering the parties' arguments, the Board finds and concludes the preliminary hearing Order should be affirmed.

Claimant's testimony is credible that she fell at work when her left foot slipped as she turned to go to the restroom towards the end of her break. That is similar to the history

recorded by the ambulance personnel and the emergency room personnel, who attended claimant immediately after the accident. That is also the history claimant provided to Annette Simpson, respondent's senior claims representative.

At this juncture, the evidence establishes that it is more probably true than not that claimant's December 23, 2004, accident and the resulting injury occurred due to her foot slipping. Conversely, the evidence does not establish the accident resulted from either horseplay or a personal risk.

WHEREFORE, the Board affirms the February 16, 2005, Order entered by Judge Barnes.

IT IS SO ORDERED.

Dated this ____ day of May, 2005.

BOARD MEMBER

c: Tom E. Hammond, Attorney for Claimant
Matthew J. Schaefer, Attorney for Respondent
Nelsonna Potts Barnes, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director